

Application No.: 10/784,573
Dated: February 8, 2007
Amendment

REMARKS/ARGUMENTS

Claims 1 through 15 are pending in the instant application. Claim 16 is believed to have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Claims 1 through 4 and 8 have been amended. Support for the amendments to claims 1 and 2 may be found at page 11, lines 9 through 27, and elsewhere within applicants' specification, as originally filed.

The Examiner has rejected claims 1 through 4, 8, 14 and 15 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Examiner has rejected claims 1 through 13 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Examiner has indicated that claims 1 through 3 would be allowable if amended to overcome the 35 U.S.C. 101 rejection. The Examiner has objected to claims 4 through 13 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, or if the base claim is amended to overcome the rejection. The Examiner has also indicated that claims 14 and 15 would be allowable. The objections to applicants' claims and the rejection of applicants' claims are respectfully traversed. Reconsideration and favorable action is respectfully solicited in view of the following.

The Examiner has rejected claims 1 through 4, 8, 14 and 15 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Examiner is of the view that:

Application No.: 10/784,573
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Claims 1, 2, 3, 4, 8, 14 and 15 recites wave numbers in the range between about 4,000 to about 10,000 cm^{-1} . A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). ... In the present instance, claim 1, 2, 3, 4, 8, 14 and 15 recite the broad recitation of 3900-10100 cm^{-1} , and the claim also recites 4100-9900 cm^{-1} , which is the narrower statement of the range/limitation.

While not necessarily agreeing with or acquiescing in the instant rejection, the applicants have amended claims 1 through 4 and 8 to remove additional recitations of the range of wavenumbers, rendering this rejection moot with respect to those claims. Additionally, the applicants believe that the instant grounds for rejection are not applicable to claims 14 and 15, since there is no second recitation of a range of wavenumbers appearing therein. In view thereof, the applicant respectfully requests that the rejection of claims 1 through 4, 8, 14 and 15 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention, be removed.

The Examiner has rejected claims 1 through 13 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Examiner is of the view that:

Claim 1 is rejected because it is claiming a non-tangible result. In claim 1, merely calculating the optical retardation value of the material using the spectra would not appear to be sufficient to constitute a useful, concrete and tangible result, since the outcome of the calculating step has not been used in a disclosed practical application nor made available (in the claim) in such a manner that its usefulness in a disclosed practical application can be realized. ... Claims 2 and 3 are rejected because it is claiming a non-tangible result. In claims 2 and 3, merely determining the birefringence value of the material according to the formula would not appear to be sufficient to constitute a useful, concrete and tangible result, since the outcome of the determining step has not been used in a disclosed practical application nor made available (in the claim) in such a manner that its usefulness in a

Application No.: 10/784,573
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disclosed practical application can be realized. ... Claims 4-13 are rejected for reasons similar to the reasons of rejection of claim 1, 2 and 3 above because they are not claiming a useful, concrete and tangible result and therefore are directed to non-statutory subject matter. Claims 4-13 comprise(s) intermediate step(s) in the method for determining the optical retardation value of an anisotropic material, claimed in claims 1, 2 and/or 3.

While not necessarily agreeing with or acquiescing in the instant rejection, the applicants have amended claims 1 and 2. As may be seen, claims 1 and 2, and each claim depending therefrom, now claim methods for producing an anisotropic material having a first physical property. It is respectfully submitted that the outcomes of the respective determining steps of independent claims 1 and 2 are clearly employed in practical applications that are disclosed within the instant application.

With regard to claim 3, and the claims that depend therefrom, the applicants believe that the instant grounds for rejection are not applicable, since the outcome of the determining step is clearly employed in a practical application disclosed within the instant application. The Examiner's attention is directed to claim 3, wherein claimed is:

A method of optimizing a first physical property of an anisotropic material during its manufacture comprising: polarizing a light beam having at least a portion of the wavenumbers between about 4,000 to about 10,000 cm^{-1} to obtain a polarized light beam; passing the polarized light beam through the material to obtain a transmitted beam; polarizing the transmitted beam to obtain a polarized transmitted beam; detecting the polarized transmitted beam; collecting an absorbance or transmission spectra as a function of wavenumbers; calculating the optical retardation value of the material using the spectra; determining the birefringence value of the material according to the formula: $R = \Delta n_{\text{sample}} d$ where R = optical retardation value, Δn_{sample} , is the birefringence value and d is the thickness of the material; locating the value of Δn_{sample} on a previously prepared curve of the first physical property of the material plotted as functions of birefringence and a first process parameter; identifying an initial first physical property and initial first process parameter associated with Δn_{sample} ; selecting a desired

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value for the first physical property of the anisotropic material and identifying the target first process parameter corresponding to the desired value on the previously prepared curve; and **adjusting the initial first process parameter to the target first process parameter to optimize the first physical property of the material.** [Emphasis added].

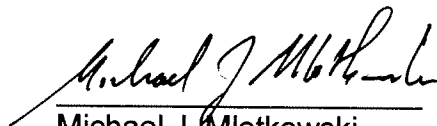
As may be seen, the outcome of the determining step is clearly employed in a practical application disclosed within the instant application. In view thereof, the applicant respectfully requests that the rejection of claims 1 through 13 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, be removed.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-2478(13791).

It is respectfully submitted that the present claims are in condition for allowance. Prompt notification of allowance is respectfully solicited.

Respectfully submitted,

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